

NO. UWY-CV15 6050025 S	:	SUPERIOR COURT
DONNA L. SOTO, ADMINISTRATRIX OF THE ESTATE OF VICTORIA L. SOTO, ET AL.	:	COMPLEX LITIGATION DOCKET
V.	:	AT WATERBURY
BUSHMASTER FIREARMS INTERNATIONAL, LLC, ET AL.	:	JULY 26. 2021

**PRACTICE BOOK SECTION 13-10 NOTICE OF CLAIM OF OBJECTION FOR
ADJUDICATION WITH ATTACHED AFFIDAVIT**

Pursuant to Practice Book Section 13-10, the plaintiffs hereby give notice that they claim the following discovery objection for adjudication. An affidavit concerning the parties' meet and confer is attached hereto.

The parties have met and conferred repeatedly with regard to plaintiffs' Request for Production #17 from plaintiffs' First Set of Requests for Production dated 11/13/15. RFP #17, Remington's objection, and the matters that the parties were able to resolve with regard to the RFP are set forth on the following page.

Request for Production #17, Plaintiffs' First Requests for Production, dated 11/13/15:

- 17: Any statements, documents, and/or communications concerning the December 14, 2012 mass shooting at Sandy Hook Elementary School and/or concerning the events which are the subject of this Complaint.

Objection:

Response: Objection. Plaintiffs' request for "statements, documents and/or communications" concerning the subject shooting is vague, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The shooting received considerable national publicity, and searching for "communications" about the shooting, without regard to the nature and purpose of the communication, among all persons employed by Remington at each of the locations across the country where Remington transacts business is oppressive and unduly burdensome. Remington further objects to the extent this request seeks production of documents falling within the attorney-client and attorney work product privileges.

DN 162, Remington's Objs. & Resp. Pls.' First Reqs. Produc. dated 5/16/16; *see also* Plaintiffs' 6/29/16 First Requests for Production-Revised, at n.1.

Agreements regarding RFP #17, Reached by Meet and Confer:

1. The parties agreed that the time frame of this Request ends December 31, 2016, resolving Remington's undue burden objection to the extent it was based on time frame.
2. Plaintiffs withdrew "and/or concerning the events which are the subject of this Complaint" and agreed to narrow the request to "Any statements, documents, and/or communications concerning the December 14, 2012 mass shooting at Sandy Hook Elementary School, including statements, documents, and/or communications concerning responses to the shooting and/or the shooter."
3. The parties agree that this RFP does not call for a collection from every Remington employee, and that Remington will collect responsive documents from 43 custodians.
4. The parties do not agree as to whether Remington is required to collect responsive documents from persons who were directors during the relevant time period, but were not also executives at Remington (the "Non-Executive Directors"). There are 11 Non-Executive Directors in issue, one of whom is deceased. This issue requires adjudication.

THE PLAINTIFFS,

By: /s/ Alinor C. Sterling_____
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Their Attorneys

CERTIFICATION OF SERVICE

This is to certify that a copy of the foregoing has been mailed, postage prepaid, and emailed
this day to all counsel of record as follows:

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COUNSEL FOR:

BUSHMASTER FIREARMS INTERNATIONAL LLC, A/K/A;
FREEDOM GROUP, INC., A/K/A;
BUSHMASTER FIREARMS, A/K/A;
BUSHMASTER FIREARMS, INC., A/K/A;
BUSHMASTER HOLDINGS, INC., A/K/A;
REMINGTON ARMS COMPANY, LLC, A/K/A;
REMINGTON OUTDOOR COMPANY, INC., A/K/A

Dated: July 26, 2021

/s/ Alinor C. Sterling
Joshua D. Koskoff
Alinor C. Sterling
Jeffrey W. Wisner

NO. UWY-CV15 6050025 S	:	SUPERIOR COURT
	:	
DONNA L. SOTO, ADMINISTRATRIX	:	
OF THE ESTATE OF	:	COMPLEX LITIGATION
VICTORIA L. SOTO, ET AL	:	DOCKET
	:	
V.	:	AT WATERBURY
	:	
BUSHMASTER FIREARMS	:	
INTERNATIONAL, LLC, ET AL	:	JULY 26, 2021

**AFFIDAVIT REGARDING ATTEMPTS TO RESOLVE REMINGTON'S OBJECTIONS
TO REQUEST FOR PRODUCTION 17 IN
THE PLAINTIFFS' FIRST REQUESTS FOR PRODUCTION**

I, ALINOR STERLING, hereby depose and state that:

1. I am over the age of 18 and believe in the sanctity of an oath.
2. I make this Affidavit upon my own personal knowledge, information and belief.
3. I am counsel for the plaintiffs in the above-entitled matter.

Background on Request for Production 17

4. Request for Production 17 ("RFP 17") in the plaintiffs' First Requests for Production initially sought "any statements, documents, and/or communication concerning the December 14, 2012 mass shooting at Sandy Hook Elementary School, and/or concerning the events which are the subject of this Complaint." In response to Remington's objections and following multiple meet and confers, the plaintiffs agreed to limit both the scope and time period of RFP 17 to "any statements, documents, and/or communication concerning the December 14, 2012 mass shooting at Sandy Hook Elementary School, including statements, documents, and/or communications concerning responses to the shooting and/or the shooter" from the time of the shooting through December 31, 2016. (DN 313.00, Ex. A.)

5. Remington also objected to RFP 17 on the basis of undue burden, suggesting that RFP 17 called for the search of thousands of its employees' email accounts. In response, the plaintiffs agreed that they would not seek the review of all of Remington's employees' emails. The parties attempted to meet and confer to identify appropriate custodians for RFP 17, which were unsuccessful. The discussion reached a stalemate when the plaintiffs requested information about Remington's collection efforts for RFP 17.

6. On July 8, 2020, the plaintiffs claimed a number of discovery objections for adjudication, including Remington's undue burden objection to RFP 17 tied to plaintiffs' request

for information about Remington's collection efforts to this RFP. (DN 313.00.)¹ After the parties briefed the issue (DN 314.00 and 315.00), the Court ruled on July 16, 2020 that Remington did not get to "determine[] which Remington employees might possess responsive documents without further explanation" and ordered the parties "to meet and confer within 10 days to attempt to resolve the issue of which employees records will be searched." (DN 316.00.)

7. Remington filed for bankruptcy on July 27, 2020. This litigation was automatically stayed. (DN 317.00.)

8. Following the lift of the automatic stay one year later, the parties began to meet and confer about the outstanding discovery objections and issues in the litigation. To address the issue of custodians for RFP 17, Remington provided their view on the proposed list of 65 unique custodians that the plaintiffs had provided in July 2020. Remington agreed to produce for 43 custodians—16 from the plaintiffs' list that overlapped with the list of custodians previously provided by Remington, and 27 additional custodians identified by the plaintiffs. The plaintiffs agreed to remove 11 proposed custodians from their list after Remington informed the plaintiffs that those individuals were not employed during the previously agreed-upon period for RFP 17. The parties could not reach consensus on the remaining 11 proposed custodians, who were serving as directors during the agreed-upon period and were not separately employed as Remington executives ("Non-Executive Directors").

9. On July 21, 2021, Remington sent a letter ("July 21 Letter") to the plaintiffs stating that it would not be producing documents for the 11 Non-Executive Directors, arguing that these individuals were not Remington employees, that there was no basis to believe that responsive information would be found in their data that would not be cumulative of data found in the custodial collections of Remington's corporate secretary and four directors who were also executives of Remington ("Executive Directors"), and that Remington was not required to collect from former directors. At the request of Remington, the July 21 Letter is attached as Exhibit A.

10. The following day, the plaintiffs agreed to meet and confer with Remington on certain discovery issues, including the issue around the Non-Executive Directors. In that email, the plaintiffs expressed concern that the July 21 Letter suggested that Remington had not collected or sought to preserve relevant emails and documents from its directors when this litigation was first filed in 2014. That email is attached is Exhibit B.

July 23, 2021 Meet and Confer on RFP 17

11. At approximately 4:15 PM on Friday, July 23, 2021, counsel for Remington and the plaintiffs had a conference call to meet and confer on a number of discovery objections, including Remington's objection to the production of emails and documents from 11 Non-Executive Directors in response to RFP 17. On the call for Remington were James Vogts, James Rotondo, and Andrew Lothson, and for the plaintiffs were myself, Jacobus Schutte, Jeffrey Wisner, and Carly Lagrotteria. The call lasted until approximately 4:50 PM that day.

¹ The details of the meet and confers around RFP 17 were outlined in detail in DN 313.00 – 315.00.

12. On RFP 17, the plaintiffs asked Remington to confirm whether the 11 Non-Executive Directors were put on notice of document preservation requirements when this litigation began in 2014. Remington's counsel stated that they had an obligation to preserve what they "reasonably anticipate[d]" would be relevant. They stated that they did not believe that Non-Executive Directors would have emails or documents that would be "reasonably relevant" since the custodial collection included documents from the members of the board of directors who were also executives employed by Remington.

13. The plaintiffs asked again whether the Non-Executive Directors were put on notice of preservation obligations at the time of the filing of this litigation in 2014. Remington stated that this question was "inept" because it presumed a preservation obligation when they had determined that there was no reason to put those Non-Executive Directors on notice.

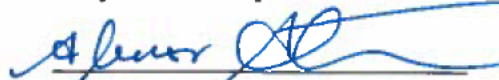
14. Ultimately, Remington confirmed that the Non-Executive Directors were not advised to "preserve personal email accounts" based on Remington's counsel's belief that no documents or emails would be relevant.

15. The plaintiffs asked whether Remington objected on the basis of burden to collecting the emails of Non-Executive Directors. Remington confirmed that burden is one of the arguments against collecting from Non-Executive Directors who were no longer serving on the board.

16. The plaintiffs then asked whether Remington had taken any steps to assess what would be needed to collect emails and documents from the Non-Executive Directors, and if any contact had been made to these Non-Executive Directors. Remington said that no steps had been taken, noting that one of the former Non-Executive Directors had since passed away.

17. Remington stated that they were moving forward with collecting from the additional 27 custodians that had been identified for RFP 17.

18. The plaintiffs maintain Non-Executive Directors who were serving as directors during the relevant time period for RFP 17 are appropriate custodians whose responsive documents Remington had an obligation to preserve when suit was filed, and presently has an obligation to produce. Remington disagrees. Despite extensive efforts, the parties are unable to resolve this aspect of Remington's objection to RFP 17. The plaintiffs request that Court rule on this issue.


Alinor Sterling

STATE OF CONNECTICUT)
CITY OF BRIDGEPORT) ss. Bridgeport
COUNTY OF FAIRFIELD)

Subscribed and sworn before me this 26th day of July, 2021, by Alinor Sterling.

WITNESS MY OFFICIAL SEAL:


Notary Public

My commission expires: 12/31/2025

YVETTE M. JOHNSON
NOTARY PUBLIC
My Commission Expires Dec. 31, 2025

EXHIBIT A

NO. UWY-CV15 6050025 S	:	SUPERIOR COURT
DONNA L. SOTO, ADMINISTRATRIX OF THE ESTATE OF VICTORIA L. SOTO, ET AL.	:	COMPLEX LITIGATION DOCKET
V.	:	AT WATERBURY
BUSHMASTER FIREARMS INTERNATIONAL, LLC, ET AL.	:	JULY 8, 2020

**PRACTICE BOOK SECTION 13-10 NOTICE OF CLAIM OF OBJECTION FOR
ADJUDICATION WITH ATTACHED AFFIDAVIT**

Pursuant to Practice Book Section 13-10, plaintiffs hereby give notice that they claim the following discovery objection for adjudication. An affidavit concerning the parties' meet and confer is attached hereto as Exhibit A.

In the most recent status conference, the Court directed the parties to meet and confer concerning outstanding discovery objections and to claim for adjudication matters that could not be resolved. The parties met and conferred telephonically three times and have resolved many of the objections. The parties, however, were unable to resolve all the issues with regard to plaintiffs' Request for Production #17 from plaintiffs' First Set of Requests for Production dated 11/13/15. RFP #17, Remington's objection, and the matters that the parties were able to resolve with regard to the RFP are set forth on the following page.

Request for Production #17, Plaintiffs' First Requests for Production, dated 11/13/15:

- 17: Any statements, documents, and/or communications concerning the December 14, 2012 mass shooting at Sandy Hook Elementary School and/or concerning the events which are the subject of this Complaint.

Objection:

Response: Objection. Plaintiffs' request for "statements, documents and/or communications" concerning the subject shooting is vague, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The shooting received considerable national publicity, and searching for "communications" about the shooting, without regard to the nature and purpose of the communication, among all persons employed by Remington at each of the locations across the country where Remington transacts business is oppressive and unduly burdensome. Remington further objects to the extent this request seeks production of documents falling within the attorney-client and attorney work product privileges.

DN 162, Remington's Objs. & Resp. Pls.' First Reqs. Produc. dated 5/16/16; *see also* Plaintiffs' 6/29/16 First Requests for Production-Revised, at n.1.

Agreements regarding RFP #17, Reached by Meet and Confer:

1. The parties agreed that the time frame of this Request ends December 31, 2016, resolving Remington's undue burden objection to the extent it was based on time frame. *See* Ex. A, Alinor C. Sterling Affidavit ¶ 5.
2. Plaintiffs withdrew "and/or concerning the events which are the subject of this Complaint" and agreed to narrow the request to "Any statements, documents, and/or communications concerning the December 14, 2012 mass shooting at Sandy Hook Elementary School, including statements, documents, and/or communications concerning responses to the shooting and/or the shooter." *Id.* ¶ 6.
3. The parties agree that this RFP does not call for a collection from every Remington employee. *Id.* ¶ 7. However, during the parties' meet and confers, plaintiffs asked for information concerning Remington's collection efforts for this RFP, in an effort to understand the basis for Remington's undue burden objection. *Id.* ¶ 8. Remington refused to provide that information. *Id.* ¶¶ 8-9. The parties' negotiations broke down on this point, and the undue burden objection remains unresolved. *Id.* ¶¶ 8-12.

THE PLAINTIFFS,

By: /s/ Alinor C. Sterling
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Their Attorneys

CERTIFICATION OF SERVICE

This is to certify that a copy of the foregoing has been mailed, postage prepaid, and emailed
this day to all counsel of record as follows:

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COUNSEL FOR:

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FREEDOM GROUP, INC., A/K/A;
BUSHMASTER FIREARMS, A/K/A;
BUSHMASTER FIREARMS, INC., A/K/A;
BUSHMASTER HOLDINGS, INC., A/K/A;
REMINGTON ARMS COMPANY, LLC, A/K/A;
REMINGTON OUTDOOR COMPANY, INC., A/K/A
Dated: July 8, 2020

/s/ Alinor C. Sterling

Joshua D. Koskoff
Alinor C. Sterling
Jeffrey W. Wisner

EXHIBIT A

NO. UWY-CV15 6050025 S	:	SUPERIOR COURT
DONNA L. SOTO, ADMINISTRATRIX OF THE ESTATE OF VICTORIA L. SOTO, ET AL.	:	COMPLEX LITIGATION DOCKET
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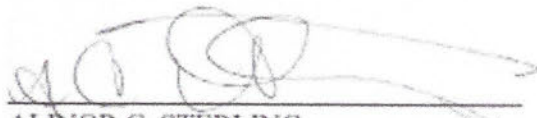
AFFIDAVIT

1. My name is Alinor C. Sterling. I am over eighteen and believe in the obligation of an oath.
2. I make this affidavit concerning the parties' meet and confers regarding Remington's objections to plaintiffs' First and Second Requests for Production and First Interrogatories based on personal knowledge.
3. I claim Remington's May 16, 2016 objection to plaintiffs' Request for Production #17, from plaintiffs' First Requests for Production for adjudication.
4. The parties met and conferred telephonically concerning these objections on June 26 at 11:00 (EST), July 1 at 14:00 (EST) and July 6, 2020 at 15:00 (EST). The following counsel participated in these conferences: Attorneys James Vogt, Andrew Lothson, James Rotondo, and Jeffrey Mueller for Remington; and Attorneys Alinor Sterling, Joshua Koskoff, Christopher Boehning, Janus Schutte and Jeff Wisner for the plaintiffs. Request for Production 17 was the subject of significant discussion.
5. Remington objected to producing documents responsive to RFP #17 through the present day. The parties agreed to limit the time frame for this RFP to end on December 31, 2016, resolving Remington's undue burden objection to the time frame.
6. Remington objected to this RFP as vague. Plaintiffs agreed to narrow the request to "Any statements, documents, and/or communications concerning the December 14, 2012 mass shooting at Sandy Hook Elementary School, including statements, documents, and/or communications concerning responses to the shooting and/or the shooter."
7. Remington objected to this RFP as unduly burdensome with respect to the number of individuals encompassed by the request. Remington's counsel indicated that the RFP calls for Remington to search the emails of "thousands" of employees. Plaintiffs agreed that the custodians whose files should be searched for responsive information can be restricted to a lesser number of employees. Plaintiffs inquired what search had been done by Remington in response to this RFP. In the first meet and confer on June 26, 2020, I

understood Remington's counsel to indicate that no search had been done for responsive documents. Notes taken by my co-counsel during the call confirmed this understanding. Remington requested that plaintiffs provide a list of custodians whose files should be searched. After consideration, we agreed to do so.

8. In a second meet and confer call on July 6, the parties continued to discuss RFP #17. During this call, and via an email sent July 3, Remington's counsel indicated that in fact Remington had collected documents responsive to RFP #17, but had not yet produced such documents. Attempting to understand and resolve Remington's undue burden objection, my co-counsel Josh Koskoff inquired as to what custodians Remington had searched in collecting materials responsive to RFP #17. Remington refused to identify those custodians, indicating that in its view, the identities of the custodians whose files were searched is work-product privileged. Attorney Koskoff questioned Remington's lack of transparency and asked Remington to reconsider its position.
9. Following the July 6 meet and confer, I sent an email requesting again that Remington withdraw its claim of privilege and identify the custodians who were searched in order to collect documents responsive to RFP #17. Without transparency from Remington as to the scope of the search it performed, plaintiffs' counsel are unable to evaluate and respond to Remington's claims of undue burden.
10. During the course of our July 6 meet and confer, Remington proposed that plaintiffs wait until its rolling production is complete and then use the metadata "custodian" field to determine what custodians it searched. It also proposed that plaintiffs will have the opportunity to inquire concerning the identities of custodians searched during the corporate designee depositions. We cannot reconcile those representations made by Remington with its claim of work product privilege, and that proposal would create delay when this issue should be resolved now.
11. Notwithstanding Remington's position, on July 6, plaintiffs did provide Remington with a list of employees who, based on our present, necessarily incomplete understanding of Remington's corporate functions, would represent an appropriate starting point as custodians whose files should be searched in response to RFP #17.
12. Given this impasse, I represent that the parties have been unable to reach agreement regarding RFP #17 and claim it for adjudication.

I, **ALINOR C. STERLING**, hereby certify that I have reviewed the above Affidavit and that it is true and accurate to the best of my knowledge and belief.



ALINOR C. STERLING

Subscribed and sworn to remotely via video-conference pursuant to Executive Order 7Q, issued on March 30, 2020, on this 8th day of July, 2020.

Dolores G. Gilbertie

DOLORES G. GILBERTIE

NOTARY PUBLIC

My Commission Expires: _____

DOLORES G. GILBERTIE

NOTARY PUBLIC

My Commission Expires Mar. 31, 2025



Dolores Gilbertie

From: Alinor C. Sterling
Sent: Tuesday, June 30, 2020 2:33 PM
To: James Vogts; Andrew Lothson; James Rotondo; Williams, Paul D.; Mueller, Jeff; jimvogts@gmail.com
Cc: Josh D. Koskoff; Schutte, Jacobus; Boehning, Christopher; Jeffrey Wisner; Lorena Gullotta
Subject: Soto/plaintiffs' positions regarding DN 216, RFP 17; DN 240, RFPS 1, 2, 10; In person depositions

Counsel,

At our meet and confer on the 26th, we indicated that we would provide you specific proposals to narrow or clarify certain pending discovery requests. We wish to provide you with those specific proposals in advance of our continued meet and confer tomorrow, so that you can be prepared to respond to them at tomorrow's meeting:

DN 216: REMINGTONS' 7/29/16 OBJECTIONS TO PLAINTIFFS' FIRST RFPs, REVISED DATED: 6/29/16
RFP #17. "Any statements, documents, and/or communications concerning the December 14, 2012 mass shooting at Sandy Hook Elementary School and/or concerning the events which are the subject of this Complaint."

Remington objects to this request as overbroad and unduly burdensome, because Remington reads the request as imposing a burden to search every employee's emails and documents.

Our position: We are not requesting that Remington search every employee at Remington's emails and documents. This is a request that Remington do a reasonable search, to include anyone Remington is or should be collecting as a custodian, including company leaders and executives, employees with marketing and sales responsibilities, and employees working in research and design. Based on our review of your disclosures, we will shortly provide you with a list of individuals who would necessarily be included as custodians in a reasonable search. To be clear, the requirement is one of reasonableness; by providing our best current understanding of who are appropriate custodians to search, we are not waiving either Remington's obligation to perform a full, reasonable search or the right to request additional searches as we learn more about Remington's employees and internal processes.

In addition, we are willing to narrow "Any statements, documents, and/or communications concerning the December 14, 2012 mass shooting at Sandy Hook Elementary School and/or concerning the events which are the subject of this Complaint" to "Any statements, documents, and/or communications concerning the December 14, 2012 mass shooting at Sandy Hook Elementary School, including statements, documents, and/or communications concerning responses to the shooting and/or the shooter."

DN 240: REMINGTONS' 10/3/16 OBJECTIONS TO PLAINTIFFS' SECOND SET OF RFPs DATED 8/3/16
RFP #1: "Annual/corporate reports produced by or at the behest of the Company."
RFP#2: "Annual/corporate reports produced by or at the behest of Bushmaster Firearms International, LLC a/k/a/ Bushmaster Firearms from 1976 to the present."

Remington wanted clarification concerning what "annual/corporate reports" means.

Our position: These requests seek 1) reporting to regulators and governmental entities (for example the SEC, ATF, etc.); 2) internal, regular and event-triggered reporting to parent entities, relevant boards of directors, and/or investors.

RFP #10: “All documents pertaining to the acquisition of the Bushmaster brand and/or Bushmaster Firearms International, LLC by the Company and/or Cerberus Capital Management.”

Remington again wanted clarification as to what this request is seeking.

Our position: This request is seeking documents and communications related to any communicated rationale for a transaction, proposals for future marketing strategies, discussions of future earnings potential and areas for future growth, projections for future return on investment, and discussions of any plans for an initial public offering (“IPO”). Such documents and communications would include, for example, any letters of intent, bid letters, pitch books or presentations, materials prepared for or submitted to any board of directors or management, draft S-1s or other required filings, investors presentations, and any materials prepared by or for prospective underwriters for any IPO including pitch decks. This request includes both internal communications and any communications with relevant external parties, including Cerberus, potential financial participants in any contemplated transaction, and any advisors or underwriters that were contacted to potentially assist with an acquisition or IPO.

UPCOMING DEPOSITIONS: We had also indicated that we would get back to you regarding whether we intend to proceed with the scheduled individually noticed depositions in person or remotely. Although our preference is to take these depositions in person, given the current Covid-19 issues, we will plan to take these depositions remotely.

Lastly, the Court requested the parties claim the objections that require ruling by July 6. We are hopeful that these will be relatively few. We need to discuss tomorrow the mechanics of accomplishing this.

Alinor

Alinor Sterling | Attorney at Law
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The logo for Koskoff, featuring the word "Koskoff" in a bold, blue, sans-serif font.

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Dolores Gilbertie

From: Alinor C. Sterling
Sent: Wednesday, July 1, 2020 4:33 PM
To: James Vogts; Andrew Lothson; James Rotondo; Mueller, Jeff; Williams, Paul D.
Cc: Josh D. Koskoff; Boehning, Christopher; Schutte, Jacobus; Jeffrey Wisner; Lorena Gullotta
Subject: Following up on today's meet and confer

Counsel,

In follow up from today's call, here are the additional points of compromise and clarification we offer, all pertaining to RFPs in DN #240.

RFP #1: "Annual/corporate reports produced by or at the behest of the Company"

RFP #2: "Annual/corporate reports produced by or at the behest of Bushmaster Firearms International, LLC a/k/a/ Bushmaster Firearms from 1976 to the present."

We had proposed a clarification by email before today's meet and confer that used the word "event-triggered." You asked us to specify what "event-triggered" means. We withdraw it, so that the clarification will now read: "These requests seek 1) reporting to regulators and governmental entities (for example the SEC, ATF, etc.); 2) internal and regular reporting to parent entities, relevant boards of directors, and/or investors."

Remington had also asked us to narrow the time frame as to these RFPs, and we are willing to do so. We are willing to narrow both to the January 1, 2006-December 31, 2016 period.

RFP #10. "All documents pertaining to the acquisition of the Bushmaster brand and/or Bushmaster Firearms International, LLC by the Company and/or Cerberus Capital Management."

We had proposed a clarification on this RFP. In today's call, you asked about the reference to an IPO in our proposal. We have revised our proposal to clarify that, with respect to a potential IPO, we are seeking documents related to discussions of proposals or strategies for generating value or return on the investment (*i.e.*, the acquisition), including the possibility of a future IPO. So we re-word the clarification as follows:

This request is seeking documents and communications related to any communicated rationale for a transaction, proposals for future marketing strategies, discussions of future earnings potential and areas for future growth, **and** projections for future return on investment, **and including** discussions of any plans for **a potential, subsequent** initial public offering ("IPO"). Such documents and communications would include, for example, any letters of intent, bid letters, pitch books or presentations, materials prepared for or submitted to any board of directors or management, draft S-1s or other required filings, investors presentations, and any materials prepared by or for prospective underwriters for any **potential, subsequent** IPO including pitch decks. This request includes both internal communications and any communications with relevant external parties, including Cerberus, potential financial

participants in any contemplated transaction, and any advisors or underwriters that were contacted to potentially assist with an acquisition or IPO.

RFP #12. “All documents from 1999 to the present that catalogue, discuss, and/or reference any nonmilitary, non-law enforcement assault with an AR-15 type/AK-47 type rifle, or other semiautomatic rifle with a pistol grip, that resulted in injury or death.”

You inquired whether we are willing to narrow the time frame as to this RFP. We understand your primary objection to be to production for the post-Sandy Hook time period. We are willing to narrow the time frame for this RFP to 1999 to December 31, 2016.

If I missed any issues on which you still need positions from us, let me know. We will expect to hear from you on Friday, following your anticipated meeting with your client, concerning your response to these proposals, as well as the others we made by email and during the course of our meet and confer.

Alinor

Alinor Sterling | Attorney at Law
KOSKOFF KOSKOFF & BIEDER PC
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The logo for Koskoff, featuring the word "Koskoff" in a bold, blue, sans-serif font.

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Dolores Gilbertie

From: Dolores Gilbertie
Sent: Thursday, July 2, 2020 2:33 PM
To: Alinor C. Sterling; Andrew A. Lothson, Esq.; Carol Obremski; H. Christopher Boehning, Esq.; J. Mueller; J. Rotondo, Esq.; Jacobus Schutte, Esq.; James B. Vogts, Esq.; Jeffrey Wisner; Josh D. Koskoff; Lorena Gullotta; Meghan McGloin; Paul D. Williams, Esq.
Subject: Donna Soto, Admx., et al. vs. Bushmaster Firearms International, LLC, et al.
Attachments: Meet and Confer Letter 7-2-2020.pdf

Dear Counsel:

Attached please find letter from Attorney Sterling dated today.

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Dolores Gilbertie | Assistant to Alinor C. Sterling, Esquire
and Meghan McGloin, Paralegal
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July 2, 2020

By Email

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James B. Vogts, Esq.
Andrew A. Lothson, Esq.
SWANSON MARTIN & BELL LLP
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Chicago, IL 60611

Re: *Soto, et al. v. Bushmaster Firearms Int'l, LLC, et al.*

Dear Counsel,

On June 26 and July 1, we met and conferred on outstanding objections to interrogatories and requests for production advanced in DN 2141, 2162, 2393, and 2404. This letter summarizes the results of those meetings to date. As we have discussed, Remington will respond to this letter stating its agreement or disagreement with this summary.

Interrogatories /RFPs Remaining in Dispute

The following interrogatories and requests for production remain in dispute and may need to be claimed for judicial resolution:

- 1. DN 216, RFP #17: “Any statements, documents, and/or communications concerning the December 14, 2012 mass shooting at Sandy Hook Elementary School and/or concerning the events which are the subject of this Complaint.”**

Remington objected to this RFP in its initial May 16, 2016 objections. At the June 26 meet and confer, counsel for Remington explained that their concern is that this RFP seeks a search of all employees’ communications, and so is burdensome and overbroad. Counsel indicated that no search had been conducted in response to this RFP. While counsel at one point indicated that statements made after the December 14, 2012 shooting are not relevant to the case, it is our understanding based on our further discussions that no relevance objection is being maintained.

1 DN 214, Pls.’ Objs. Def. Remington’s First Reqs. Produc. Dated May 26, 2016.
2 DN 216, Remington’s Objs. & Resp. Pls.’ First Rev. Reqs. Produc.
3 DN 239, Defs.’ Objs. & Resp. Pls.’ First Interrogs.
4 DN 240, Remington’s Objs. & Resp. Pls.’ Second Reqs. Produc. Docs.

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In response, we clarified that we are seeking a reasonable search of custodial emails, files, and records. We followed up on this clarification with a June 30 email in which we offered to narrow the request to: “Any statements, documents, and/or communications concerning the December 14, 2012 mass shooting at Sandy Hook Elementary School, including statements, documents, and/or communications concerning responses to the shooting and/or the shooter.”

When the parties reconvened on July 1, the defendants indicated that the time frame of the request remained an issue and that counsel was not prepared to resolve that issue, or to respond to the June 30 proposal. Remington’s counsel indicated that a meeting with its client is scheduled to take place sometime before Friday July 3, and that the defense will have a response by July 3.

- 2. DN 239, Interrogatory #7: “Identify the individual or individuals whose job description or responsibilities most closely correspond(s) to the subjects listed below and provide the dates such individual held such responsibilities and the individual’s title at the time he or she held those responsibilities. State whether each individual listed is currently employed by the Company, and, if so, in what capacity and where such individual is presently employed.”**
- a. Sales of AR-15 type rifles to major chain retail stores such as Wal-Mart and Dick’s Sporting Goods**
 - e. Distribution and sale of AR-15 type rifles to the civilian market;**
 - f. Sales of AR-15 type rifles to law enforcement markets;**
 - bb. Acquisition of the Bushmaster brand and/or Bushmaster Firearms International, LLC by the Company and/or Cerberus Capital Management. This subpart of this Interrogatory seeks information from the point in time at which the acquisition of the Bushmaster brand and/or Bushmaster Firearms International, LLC was first contemplated;**
 - cc. Development of the Company’s Code of Business Conduct and Ethics or similar document**

At the June 26 meet and confer, counsel for Remington indicated that they had been working on a response to this Interrogatory. Counsel indicated that Remington maintains its objection to the time period for this Interrogatory. In response, we offered to narrow the time period of the request to January 1, 2006-December 31, 2016. This issue was to be revisited at the July 1 meet and confer. However, defendants’ counsel were not prepared to address it at that time and have indicated a response will be provided by July 3.

At the July 1 meet and confer, Remington’s counsel advised that Remington has no objection to responding to subparts (a), (e), (f), (bb) and (cc) of this interrogatory.

- 3. DN 240, RFP #1: “Annual/corporate reports produced by or at the behest of the Company” and
DN 240, RFP #2: “Annual/corporate reports produced by or at the behest of Bushmaster Firearms International, LLC a/k/a/ Bushmaster Firearms from 1976 to the present.”**

At the June 26 meet and confer, Remington’s counsel indicated that Remington maintains its objections to the time frame of this request and seeks clarification of what “Annual/corporate reports” means. By email dated June 30, we clarified that “annual/corporate reports” seeks “1) reporting to



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regulators and governmental entities (for example the SEC, ATF, etc.); and 2) internal, regular and event-triggered reporting to parent entities, relevant boards of directors, and/or investors.” In the July 1 meet and confer, Remington asked that we clarify what “event-triggered” means. By email later that day, we withdrew that term. To sum up, plaintiffs’ final clarification of the request is as follows: “These requests seek 1) reporting to regulators and governmental entities (for example the SEC, ATF, etc.); 2) internal and regular reporting to parent entities, relevant boards of directors, and/or investors.” Remington will respond by July 3 regarding whether it will withdraw objection in response to this clarification.

We also offered to limit the time period for these requests to January 1, 2006 to December 31, 2016. Remington was not prepared to respond at the July 1 meet and confer and has promised to have a response by July 3.

4. DN 240, RFP #4: “The Company’s Code of Business Conduct and Ethics and/or any similar document regardless of its title.”

At the June 26 meet and confer, we asked whether defendants have or would produce anything responsive to this request other than the BFI Employee Policy Handbook, which had been previously produced. Counsel for Remington indicated that some additional responsive materials had been produced in response to other production requests.

Counsel for Remington explained that Remington’s objection is only to the time frame for the RFP. In response, we offered to limit the RFP to the time period of January 1, 2006 to December 31, 2016. The parties agreed to reconvene on July 1 to resolve this issue. However, when the parties met on July 1, counsel for Remington was not yet prepared to address the issue. Counsel for Remington will provide a response on July 3.

5. DN 240, RFP #10. “All documents pertaining to the acquisition of the Bushmaster brand and/or Bushmaster Firearms International, LLC by the Company and/or Cerberus Capital Management.”

At the June 26 meet and confer, we acknowledged that defendants had produced an asset purchase agreement and some related documents, but asked whether Remington had produced or planned to produce other documents responsive to this request. Counsel for Remington indicated that some documents concerning the acquisition of Bushmaster had not been produced. Counsel for Remington indicated uncertainty as to what documents the RFP seeks.

By emails dated June 30 and July 1, we clarified that this request seeks “documents and communications related to any communicated rationale for a transaction, proposals for future marketing strategies, discussions of future earnings potential and areas for future growth, and projections for future return on investment, including discussions of any plans for a potential, subsequent initial public offering (“IPO”). Such documents and communications would include, for example, any letters of intent, bid letters, pitch books or presentations, materials prepared for or submitted to any board of directors or management, draft S-1s or other required filings, investors presentations, and any materials prepared by or for prospective underwriters for any potential, subsequent IPO including pitch decks. This request includes both internal communications and any communications with relevant external parties, including Cerberus, potential financial participants in any contemplated transaction, and any advisors or underwriters that were contacted to potentially assist with an acquisition or IPO.” Remington will

respond by Friday, July 3.

- 6. DN 240, RFP #12. “All documents from 1999 to the present that catalogue, discuss, and/or reference any nonmilitary, non-law enforcement assault with an AR-15 type/AK-47 type rifle, or other semiautomatic rifle with a pistol grip, that resulted in injury or death.”**

At the June 26 meet and confer, we asked what production efforts had been made in response to this RFP. Counsel for Remington indicated that Remington had produced any documents that they found through 2012. Counsel stated that Remington had not and should not be required to search for responsive materials existing in the public domain. In response, we indicated that plaintiffs seek the production of documents in Remington’s possession, custody and control. In response to Remington’s time frame objection, plaintiffs offered to narrow the cut-off date for this RFP to December 31, 2016. Remington will respond by July 3.

Resolved Discovery Disputes

- 1. DN 214, RFP 42/44. “Documents concerning oral and written statements of any person with personal knowledge of any matter alleged in the First Amended Complaint.”**

In discussions that occurred in January 2020 and were revisited on June 26, the parties agreed to narrow this request in scope. By agreement, this request now seeks statements regarding responsibility for the shooting – for example, statements concerning the shooter’s responsibility, the shooter’s mother’s responsibility or other such statements.

Remington also reserves the right to seek statements from the plaintiffs regarding their damages or losses. While plaintiffs are willing to provide damages discovery, plaintiffs asked Remington for clarification concerning precisely what damages information is sought. The parties tabled this aspect of the request for the time being.

In response to Remington’s June 24, 2020 letter, and as memorialized in our June 25, response, despite a dispute as to whether plaintiffs (with the exception of Bill Sherlach) are required to respond to discovery in their individual capacities, plaintiffs agreed to produce statements made by plaintiffs in their individual capacities, as well as in their representative capacities. At the June 26, 2020 conference, Remington clarified that it seeks only statements that were issued in the public domain, and that it is not requesting that the plaintiffs’ email accounts be searched. The parties agreed that the plaintiffs will produce responsive statements that were publicly issued, regardless of whether they were made in an individual or representative capacity, and that this production will be sufficient response to this RFP.

- 2. DN 216, RFP 1a. “Documents demonstrating the relationships among Bushmaster Firearms International, LLC; and/or Freedom Group, Inc.; and/or Bushmaster Firearms; and/or Bushmaster Firearms, Inc.; and/or Bushmaster Holdings, LLC from January 1, 2006 to the present day.”**

Plaintiffs agreed to accept defendants’ response as it is stated in DN 216, provided that defendants withdraw their reservation of right to object to this production request, and revise their response accordingly.

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3. **DN 216, RFP 1b. “Documents concerning the relationship between the Company and Camfour, Inc. and/or Camfour Holding, LLP, including any rebates, financial incentives, comarketing agreements and other such documents/agreements. Production in response to this Request shall not include bills, bills of lading, purchase orders, sales orders, except for those pertaining to the weapon in issue in this case. The time frame of this interrogatory is from January 1, 2006 to December 14, 2012.”**

Plaintiffs agreed to withdraw this RFP provided that defendants agree to produce any responsive documents concerning Camfour that are encompassed by other discovery requests.

4. **DN 216, RFP 5. “Documents concerning communications between or among the Company and Bushmaster Firearms International, LLC; and/or Freedom Group, Inc.; and/or Bushmaster Firearms; and/or Bushmaster Firearms, Inc.; and/or Bushmaster Holdings, LLC; and/or Camfour, Inc.; and/or Camfour Holding, LLP, from January 1, 2006 to the present day.”**

Plaintiffs agreed to withdraw this RFP.

5. **DN 216, RFP 7. “Documents concerning the branding, marketing, and/or sale of AR-15 style rifles as modern sporting rifles during the period January 1, 2006 through December 14, 2012.”**

Defendants confirmed that no objection to this RFP is pending and agreed to revise their response accordingly. Defendants also agreed to review their prior productions to ensure that all responsive materials were produced for the time period articulated.

Counsel for Remington indicated that Remington has made some production with respect to this RFP, with more forthcoming. Specifically, Remington has not conducted a search by the individual SKU (Stock Keeping Unit) number of the firearm, but represented that this level of detail has been or will be produced.

6. **DN 216, RFP 8. “Documents concerning marketing, promotion, promotional strategies, the Company's customer base, the Company's desired customer base, and market research received, obtained and/or created by the Company concerning AR-15 style rifles including but not limited to the Remington/Bushmaster model XM15-E2S, from January 1, 2006 to December 14, 2012.”**

Defendants confirmed that no objection is pending, and agreed to revise their response accordingly. Defendants also reported that they will be producing documents pursuant to this request.

Defendants indicated that they have made some production with respect to this RFP, with more forthcoming. Specifically, defendants indicated that they have not conducted a search by the individual SKU (Stock Keeping Unit) number of the firearm, but represented that this level of detail has been or will be produced.

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7. **DN 216, RFP 9. “Documents, including web site postings, blog postings, and/or any other internet marketing created by or at the behest of the Company or any other defendant in this action concerning AR-15 style rifles use of assault rifles for home defense, suitability of assault rifles as gifts or family guns, and/or appropriate uses of assault rifles, prior to December 14, 2012.”**

Defendants confirmed that no objection is pending, and agreed to revise their response accordingly.

8. **DN 216, RFP 10. “Documents concerning the use of video games to market and/or promote the sale of AR- 15 style rifles including, but not limited to the Remington/ Bushmaster model XM15-E2S, from January 1, 2006 to December 14, 2012.”**

Defendants confirmed that they have not withheld any responsive materials pursuant to objection. Defendants also agreed to withdraw their reservation of right to object to this request.

9. **DN 216, RFP 11. Documents concerning the display of AR-15 style rifles in video games, including, but not limited to the Remington/Bushmaster model XM15-E2S, from January 1, 2006 to December 14, 2012.**

Defendants confirmed that they have not withheld any responsive materials pursuant to objection. Defendants also agreed to withdraw their reservation of right to object to this request.

10. **DN 216, RFP 12. “12. Documents concerning the function of the Remington/ Bushmaster model XM15-E2S.”**

Plaintiffs agreed to accept defendants’ response.

11. **DN 216, RFP 13. “Documents concerning the manner in which AR-15 style rifles including but not limited to the Remington/Bushmaster model XM15-E2S, were used by non-military and non-law enforcement owners prior to December 14, 2012, including but not limited to documents concerning storage, sharing, transfer, gifting, transport and/or re-sale of AR-15 style rifles, any and all other uses of AR-15 style rifles by such owners.”**

Defendants had requested in the January meet and confer that plaintiffs withdraw this RFP. Plaintiffs agreed to do so.

12. **DN 216, RFP 14. “Documents concerning training and instruction provided to or available to purchasers of AR-I5 style rifles including to purchasers of the Remington/Bushmaster model XM15- E2S, prior to December 14, 2012.”**

Defendants had requested in the January meet and confer that plaintiffs withdraw this RFP. Plaintiffs agreed to do so.

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- 13. DN 216, RFP 15. “Documents concerning the volume of sales of AR-15 style rifles including but not limited to the Remington/Bushmaster model XM15-E2S, by the Company from January 1, 2006 to December 14, 2012.”**

Defendants confirmed that they will withdraw their objection related to the ESI protocol, and will revise their response accordingly.

- 14. DN 216, RFP 16. “Documents concerning the volume of sales of AR-15 style rifles including but not limited to the Remington/Bushmaster model XM15-E2S, in the industry from January 1, 2006 to December 14, 2012.”**

Defendants confirmed that they will withdraw their objection related to the ESI protocol, and will revise their response accordingly.

- 15. DN 239, Interrogatory #1. “Identify each person, whether employee, agent, or other representative of the Company, or any third party, with the most knowledge of the matters alleged in plaintiffs' operative Complaint and for each person listed, give a brief statement as to the substance of such knowledge or information.”**

Plaintiffs agreed to withdraw this interrogatory.

- 16. DN 239, Interrogatory #3: “Identify any entities that have provided advice, coordination, assistance, or other services concerning advertising, marketing, public relations, market research, focus groups, social or online media monitoring, product promotion, and/or product placement for the Company's AR-15 type rifles. For each such entity listed, describe the nature of the relationship with the Company, the nature of the services provided, the time period during which those services were provided, and identify the person at each entity who was/is responsible for the provision of services to the Company. This Interrogatory seeks information for the time period from January 1, 2006 to June 14, 2013.”**

Remington agreed to withdraw its objections to this interrogatory and supplement its response.

More specifically, at the June 26 meet and confer, counsel for Remington acknowledged that there are additional entities identified in documents produced that are not listed in the response to this interrogatory and agreed to supplement this interrogatory response for the period of January 1, 2006 to December 14, 2012. Remington, however, reserved its objection to producing responsive documents for the time period from December 14, 2012 to June 14, 2013. At the July 1 conference, counsel stated that they no longer maintained this objection and would respond for the full, requested time period.

- 17. DN 239, Interrogatory #6. “Concerning the Bushmaster XM15-E2S rifle, serial number L534858, that was sold to Camfour in 2010, please state: a. When the rifle was manufactured; b. Where the rifle was manufactured; c. Whether the rifle was composed of any firearm parts purchased from outside the Company; d. If the answer to 6(c) is in the**

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affirmative, identify each purchased part and provide the name of the entity from which it was purchased, the entity's location, when the part was purchased, and the name of any persons at the entity who were involved in the purchase.”

Defendants agreed to withdraw their objections to 6(a), 6(b) and 6(c), and plaintiffs agreed to withdraw interrogatory 6(d).

18. DN 239, Interrogatory #8, 9, 10, 11 (all concerning applicable insurance coverage)

Although Remington recently clarified by letter that it does carry coverage applicable to plaintiffs' claims, plaintiffs requested that Remington provide that response formally and in a certified form. Remington agreed to do so.

19. DN 240, RFP 3. “Product catalogues produced by or at the behest of the Company or Bushmaster Firearms International, LLC a/k/a/ Bushmaster Firearms from 1976 to the present.”

Plaintiffs agreed to accept defendants' response.

20. DN 240, RFP 11. “Copies of all documents identified in your response to Plaintiffs' First Set of Interrogatories.”

Plaintiffs noted that although Remington objected to the corresponding interrogatory, no specific objection was made to this RFP. Defendants agreed to update as necessary.

Discussion Concerning Upcoming Production

At the June 26 meet and confer, Remington's counsel provided the following updates on upcoming productions:

1. Plaintiffs will be receiving all product catalogs issued by defendants between 2006 and 2016, with the exception of the DPMS 2007 catalog, which could not be located in hard or digital format.
2. During the week of June 29th, Defendants will produce social media in native format.
3. Although Defendants had previously indicated that the next rolling production would occur on or about July 3rd, the production will likely occur the following week of July 6th.

Discussion Concerning Upcoming Depositions

Plaintiffs have requested dates for the corporate designee deposition as to which Remington's Motion for Protective Order was denied. Remington proposed discussing this issue during the June 26 meet and confer, and plaintiffs agreed to do so. At the meet and confer, Remington's counsel indicated that counsel is available to begin corporate designee depositions during the week of August 3rd, although counsel is still working to confirm witness availability. Counsel for Remington also indicated that there

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may be multiple witnesses, given the company's various locations and many departments. Plaintiffs' counsel indicated that we wish to proceed and that it would be productive for Remington to indicate which witnesses would be made available on each topic.

At the July 1 meet and confer, we advised that despite our wish to proceed with individually noticed depositions in person, we will instead proceed remotely. Also on July 1, Remington's counsel confirmed the plan to move forward with corporate designee depositions on August 4, 5, or 6 to address one or more portions of Topics 1, 2, 3, and 4. Remington does not yet have the names of the deponents.

Next Steps

The parties recognize that the Court requested that objections requiring ruling be claimed on July 6 and are working toward that goal. Once Remington has had a chance to review this letter and respond, the parties will also discuss what further steps will be taken to formalize these agreements.

Very truly yours,



Alinor C. Sterling

ACS/dgg

cc: Joshua D. Koskoff, Esquire
Jeffrey W. Wisner, Esquire
H. Christopher Boehning, Esquire
Jacobus J. Schutte, Esquire
Lorena B. Gullotta

Dolores Gilbertie

From: James Vogts <jvogts@smbtrials.com>
Sent: Friday, July 3, 2020 4:38 PM
To: Alinor C. Sterling; Josh D. Koskoff; Jeffrey Wisner; Chris Boehning; Schutte, Jacobus
Cc: Rotondo, Jim; Mueller, Jeff; Williams, Paul D.; Andrew Lothson
Subject: Soto

Alinor, Defendants' position on the fair and reasonable time-period for discovery in this case remains January 1, 2006 to the date of the shooting on December 14, 2012. This was the time period embodied in nearly all of Plaintiffs' November 2015 First RFPs and, since discovery began, the period in which Defendants have conducted custodial searches for ESI and produced responsive documents.

However, in the interest of compromise, Defendants will agree to a time period of 2006 to 2016 for the following requests under discussion:

First Int. 7 (DN 239): Defendants agree to a 2006 to 2016 time period.

Second RFP 1 (DN 240): Defendants agree to a 2006 to 2016 time period.

Second RFP 2 (DN 240): Defendants agree to a 2006 to 2016 time period.

Second RFP 4 DN 240): Defendants agree to a 2006 to 2016 time period.

Second RFP 12 (DN 240): Defendants agree to a 2006 to 2016 time period.

First RFP 17 (DN 216): Defendants agree to a 2006 to 2016 time period.

However, for a number of reasons, Defendants cannot agree to a more expansive "2006 to the present time" period for **RFP 17**. First of all, contrary to what's stated in your letter yesterday, Defendants have not waived an objection to the "relevance" of documents produced in response to this request. Post-shooting documents produced in response to this request may very well prove to be irrelevant to the claim made in the case. Second, again contrary to what's stated in your letter yesterday, Defendants have invested considerable time and expense in searching for a wide-range of documents, including documents responsive to this request, which is, in part, why Defendants are willing compromise on the time period for this request. Requiring Defendants to again collect, review and process additional documents in the 2017 to 2020 time period (during which the case was in appellate courts) imposes undue burden and expense. Third, Defendants cannot agree to produce documents responsive to this request "to the present time" and assume a continuing duty to search for and produce responsive documents up to the time of trial. Lastly, your letter yesterday makes no mention of Plaintiffs' agreement to provide Defendants a "list of individuals" who Plaintiffs believe should be "custodians in a reasonable search." Until Defendants receive Plaintiffs' list, the magnitude of the burden and expense in searching for additional responsive documents in the 2017 to 2020 time period, will remain an open question. And when Plaintiffs' list is received, a cost shifting conversation may be necessary.

With regard to **Second RFP 2 (DN 240)**, Defendants have an additional objection they neglected to raise on our Wednesday call. Your most recent "clarification" of "annual/corporate reports" to include "internal and regular reporting to parent entities, relevant board of directors, and/or investors" is not limited in any way to the subject matter of the case—Defendants' marketing and promotion of AR-type rifles—as Plaintiffs' Third RFP 37 is appropriately limited, only seeking BOD documents "discussing Your Assault Rifle Marketing Campaigns." Defendants have already produced BOD documents in which firearm marketing initiatives are mentioned, or have some relationship to AR-type rifle marketing campaigns. Defendants have not produced BOD documents that are silent on these initiatives. However, under your most

recent clarification of Second RFP 2, any report on any subject to the BOD over an 11-year period would be responsive to this request (e.g., company financial performance, budgeting matters, HR issues, pension plan investment discussions, compensation decisions, and reports on development, manufacture and sale of products wholly unrelated to this case, such as ammunition, cutlery, clothing, hunting and shooting sports accessories, and non-AR-type firearms). In response to Second RFP 2, Defendant will, however, agree to produce 1) reporting to regulators and governmental entities (for example the SEC, ATF, etc.); and 2) internal and regular reporting to parent entities, relevant board of directors, and/or investors concerning AR-type rifle advertisements and marketing campaigns.

With regard to the “Resolved Discovery Disputes” section of your letter, you make reference to **Second RFPs 5, 7, 8, 9, 13, and 14 (DN 216)** and Defendants “withdrawing their objection related to the ESI protocol” and “withdrawing their reservation of right to object to this request.” To be clear, in response to each of these requests, Defendants simply “reserve[d] the right to object ... as unduly burdensome under the terms of the ESI protocol” in the future. Paragraph 25 of the Protocol expressly gives the parties “the right to object to producing documents and ESI because of undue cost or burden and to request the Court to perform a cost-sharing shifting analysis to determine if the other Party should bear some or all of the costs.” At this time, Defendants cannot relinquish their right to lodge a future undue burden and expense objection because (1) Defendants’ production of ESI is ongoing, (2) Plaintiffs have not received Defendants’ complete ESI production and have not evaluated its responsiveness, and (3) it is possible Plaintiffs may question at some future time the responsiveness of Defendants’ production and seek to impose additional burden and expense on Defendants that Defendants believe is unreasonable and should entail cost-shifting to Plaintiffs. If this situation develops, Defendants have a right to object under the ESI Protocol.

Lastly, with respect to **Second RFPs 5 and 6 (DN 216)**, Defendants have agreed to search for historical information on their sales of AR-type rifles by SKU number, and, if it’s maintained, produce it. Defendants have not represented that this granular information “has been or will be produced.”

Let’s plan to talk Monday morning and try to resolve any remaining disputes and, if necessary, discuss how to present any disputes to the court.

Enjoy the holiday.

Jim

James Vogts
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(312) 222-8517

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From: James Vogts <jvogts@smbtrials.com>
Sent: Monday, July 6, 2020 3:55 PM
To: Alinor C. Sterling; Josh D. Koskoff; Jeffrey Wisner; Chris Boehning; Schutte, Jacobus
Cc: Rotondo, Jim; Mueller, Jeff; Williams, Paul D.; Andrew Lothson
Subject: Soto

We promised to get back to you by the end of the day with Defendants' position on their reservation of the right under the ESI Protocol to lodge a future unduly burdensome objection to certain RFPs, and to request that the Court perform a cost-shifting analysis to determine if plaintiffs should bear some or all of the costs of any additional ESI production. At this time, Defendants are not willing to withdraw their reservation of the right they have under the Protocol out of concern that doing so could be construed as a waiver.

Jim

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From: Alinor C. Sterling
Sent: Monday, July 6, 2020 8:22 PM
To: James Vogts; James Rotondo; Andrew Lothson; Mueller, Jeff; Williams, Paul D.
Cc: Josh D. Koskoff; Jeffrey Wisner; Boehning, Christopher; Schutte, Jacobus; Lorena Gullotta
Subject: Follow up from today's continued meet and confer

Counsel,

As promised our phone call of this morning, I am writing to give you our updated positions regarding the outstanding issues, as well as to memorialize the agreements reached today and some of our discussions.

As to DN 216, RFP #217, we are agreed on a time frame of up to December 31, 2016. On notes from our call last week indicate that you represented that you had no objection to the substance of the request, but rather were seeking some limitations in the scope of time and the scope of the custodians to be searched. Our notes also indicate that you told us that you had not begun to collect documents responsive to this RFP and suggested that we provide you with a list of custodians to procure responses from. We believe determining what custodians must reasonably be searched is inherently your obligation, but decided that in the interests of clarity we would go first and provide you with that list. Today and via your email sent July 3rd, we learned that in fact you have collected some amount of responsive documents from certain custodians but have not provided those documents to us and decline to reveal the names of those custodians based on a claim of attorney work product. We do not understand how the names could possibly be subject to privilege. We emphasized that we are not asking for information concerning who Remington interviewed in order to determine which custodians' files should be searched. We are simply asking for the identities of the custodians whose files were searched to collect documents responsive to RFP #17. We view your refusal to provide this information as evasive and as furthering the blind man's bluff that discovery is meant to prevent. As you noted on the call, we will have an opportunity to ask about what custodians' files were searched in the designee depositions, and as you also pointed out, the identities of some custodians will be disclosed in productions which will be forthcoming. Given that this information will be disclosed within the next month or so, we again do not understand why Remington refuses to disclose it now. We are seriously concerned that in the absence of this information, our negotiations concerning the RFP (and more generally) do not rest on a solid foundation.

As to DN 240, RFPs #1&2, we are agreed on time frame. We discussed narrowing the scope further. Remington indicated that it would be extremely burdensome to provide documents limited to "sales and marketing" because those would still include sales and marketing of bullets and other products that were not originally collected. Remington also indicated that it would be unduly burdensome for it to provide documents limited to "sales and marketing of firearms" because its collection efforts focused on assault rifles. After internal discussion, we are willing to further limit these RFPs to documents "discussing the marketing and sales of Assault Rifles" (using the definition of Assault Rifles found in plaintiffs' 3rd RFPs). This limitation would be in addition to the clarifications we have previously provided, and the agreed-on time limitation. We want to emphasize, however, that this agreement is dependent on the production of reporting to parent entities and investors, not just to the Board of Directors, as noted in the clarifications previously made.

As to DN 240, RFP #10, Remington accepts plaintiffs' clarifications and has no further objection.

As to DN 216, there are a number of RFPs where Remington has reserved the right to object if at some future point the request becomes unduly burdensome. We do not see "we may object in the future" as a legitimate answer to a discovery request. We reiterated today and reiterate again in this correspondence the request that Remington withdraw these portions of its answers, so that the record is clean. We received today your response that you decline to do so. In the context of your refusal to identify custodians, it appears to us that your refusal to compromise on this

point suggests there are deeper problems that we do not yet appreciate, but of which you are aware. We hope this point can be resolved in a discussion tomorrow. Otherwise, it appears we will need the Court's assistance on this point.

As to designee depositions, we again requested the identities and subject matters of the designee deponents. Remington indicated it is working diligently to determine the identities of the witnesses and what topics they will cover, and that this is a significant and ongoing task. We asked when Remington anticipated being able to identify the witnesses and their topics. Remington did not provide a response to that question. Remington did raise the argument that it is not required to identify 13-27(h) witnesses. We categorically disagree with that premise. We are asking once again that you identify the designees within the company that you are going to produce for a deposition upon making that determination. The plain meaning of Practice Book 13-27(h), common practice, and common sense dictate that you disclose those identities.

As to the individually noticed depositions, the parties have agreed to proceed remotely. We advised that the witnesses will need laptops and wi-fi sufficient to join an on-line platform such as Zoom. If the witnesses do not have this capability, then they can come into the reporter's office at the noticed location and use that technology to participate. Remington needs to advise us whether there is any objection to this approach, and also needs to advise us whether any of the witnesses need us to retain a reporter's office.

Disclosures: At the June 26 meet and confer, Remington reported that the next rolling production would be delayed from July 3 to the week of July 6. At today's (July 6) meet and confer, Remington advised that this production is nearly final and will be disclosed this week or next week. A subsequent production will include the responses to RFP #17.

In the course of our conversation, Remington indicated that it may be producing additional emails sent to or by Tyler and Eliason, the Maine deponents. We infer from our conversation today that perhaps Tyler and Eliason are not custodians whose files were searched for responsive documents. Further, it appears that neither is a custodian per the metadata of your productions to date, and we have identified only approximately 10 unique emails total for each witness where they are a recipient or sender in your productions to date. We therefore ask that Remington confirm whether Tyler and Eliason are custodians for purposes of its search for documents responsive to plaintiffs' discovery requests. We ask as well that Remington produce this week all documents in which their names or email addresses appear that it intends to produce in its next production, so that we can prepare for their depositions, which are scheduled to proceed in just ten days.

In connection with our agreement regarding the time limitation on RFP #17, Remington agreed that its RFP #42/44 to plaintiffs concerning responsibility for the shooting will follow the same time limitation, ending Dec. 31, 2016.

We discussed scheduling a meet and confer regarding Remington's objections to plaintiff's Third RFPs. As to the 3rd RFPs, in order to allow Remington to review its objections in light of the agreements reached this week, we are willing to schedule a meet and confer early next week, rather than at the end of this week, if that is Remington's preference. We think it would be productive for Remington to advise us in advance of the meet and confer whether it is withdrawing any objections. If we are willing to modify any of our RFPs in advance of the meet and confer, we will so advise.

Lastly, we raised the need to discuss what matters will be on the agenda for the Thursday hearing with the Court. We would like resolution of the following issues between the parties before Thursday, if possible. If we cannot reach a resolution, then we would propose raising them with the Court on Thursday:

1. An agreed on date by which Remington will provide the full list of designee deponents and topics, including the identities of the deponents.
2. A response from Remington concerning the procedure for the individually noticed depositions.
3. A meet and confer date for the 3rd RFPs.

4. Agreement from Remington that it will disclose the identities of the custodians whose files were searched for responsive documents.
5. An agreed-on approach to formalizing the agreements reached in these discussions, so that we end them with a clear record.

We are available for a wrap up call tomorrow at 11.

Sincerely,

Alinor

Alinor Sterling | Attorney at Law
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Koskoff

Dolores Gilbertie

From: James Vogts <jvogts@smbtrials.com>
Sent: Tuesday, July 7, 2020 1:35 PM
To: Alinor C. Sterling; Josh D. Koskoff; Jeffrey Wisner; Chris Boehning; Schutte, Jacobus
Cc: Rotondo, Jim; Mueller, Jeff; Williams, Paul D.; Andrew Lothson
Subject: Soto

Alinor, here are Defendants' positions on the potential agenda items set forth in your email last night:

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On or before July 24, Defendants will identify the persons they have designated to testify on topics set forth in the deposition notice during the week of August 3 in North Carolina, and the topics they will address.

2. A response from Remington concerning the procedure for the individually noticed depositions.

The upcoming individually noticed depositions in Maine and North Carolina should be conducted in accordance with Practice Book Section 13-30(g). Thus, they should be held at a court reporter's office.

3. A meet and confer date for the 3rd RFPs.

Defendants are available to meet and confer on Plaintiffs' Third Request for Production Tuesday afternoon, July 14. However, it makes sense to defer the meet and confer until after Plaintiffs have reviewed the additional responsive documents they will receive between now and Tuesday. I'm told they will number nearly 100,000 pages. We'll leave it up to you, but until Plaintiffs have seen and understand the substance and breadth of Defendants' document production, the tail seems to be wagging the dog.

4. Agreement from Remington that it will disclose the identities of the custodians whose files were searched for responsive documents.

Plaintiffs have Defendants' position on this subject. But to reiterate, the decision made by Remington's attorneys as to the persons who might have responsive documents reflects the attorneys' thought processes, and is attorney work product. Nevertheless, the parties had extensive negotiations regarding disclosure of custodial information in 2016 to finalize the ESI protocol. We have and will continue to disclose custodial information in accordance with the Protocol.

5. An agreed-on approach to formalizing the agreements reached in these discussions, so that we end them with a clear record.

This will be complicated given the number of agreements that have been reached. Perhaps the best approach is for you to draft a document (not a letter) reflecting the agreements on the various RFPs we've discussed, setting forth Plaintiffs' clarifications and revisions of RFPs and Defendants' withdrawal of objections—basically the parties' agreements. Defendants will then review the document and propose edits, if needed. Regardless, of how we approach this subject, I'm not sure Judge Bellis will want to get involved in how we deal with it.

Jim

James Vogts

Swanson, Martin & Bell LLP
330 N. Wabash Suite 3300
Chicago, IL 60611
(312) 222-8517

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Cc: Schutte, Jacobus; Boehning, Christopher; Josh D. Koskoff; Lorena Gullotta; Jeffrey Wisner
Subject: Soto

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See below in bold for our positions. Since it seems our positions have hardened, we do not see the purpose of having a further conversation this afternoon at 3. Please respond by email.

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The upcoming individually noticed depositions in Maine and North Carolina should be conducted in accordance with Practice Book Section 13-30(g). Thus, they should be held at a court reporter's office. **We are agreeing to proceed remotely because we want to move the case forward. We do not mind having the deponent deposed at the court reporter's office and will maintain those arrangements. If, however, the witness is unable to attend at the reporter's office, we would intend to proceed with a fully remote deposition. If you object to this, please advise so that we know to raise it with the judge.**

3. A meet and confer date for the 3rd RFPs.

Defendants are available to meet and confer on Plaintiffs' Third Request for Production Tuesday afternoon, July 14. However, it makes sense to defer the meet and confer until after Plaintiffs have reviewed the additional responsive documents they will receive between now and Tuesday. I'm told they will number nearly 100,000 pages. We'll leave it up to you, but until Plaintiffs have seen and understand the substance and breadth of Defendants' document production, the tail seems to be wagging the dog. **Let's do 2 pm on July 14.**

4. Agreement from Remington that it will disclose the identities of the custodians whose files were searched for responsive documents.

Plaintiffs have Defendants' position on this subject. But to reiterate, the decision made by Remington's attorneys as to the persons who might have responsive documents reflects the attorneys' thought processes, and is attorney work product. Nevertheless, the parties had extensive negotiations regarding disclosure of custodial information in 2016 to finalize the ESI protocol. We have and will continue to disclose custodial information in accordance with the Protocol.

We do not have agreement on this point and will raise it with the Court on the 9th. Because we do not have agreement on this point, we will also claim RFP #17.

5. An agreed-on approach to formalizing the agreements reached in these discussions, so that we end them with a clear record.

This will be complicated given the number of agreements that have been reached. Perhaps the best approach is for you to draft a document (not a letter) reflecting the agreements on the various RFPs we've discussed, setting forth Plaintiffs' clarifications and revisions of RFPs and Defendants' withdrawal of objections—basically the parties' agreements. Defendants will then review the document and propose edits, if needed. Regardless, of how we approach this subject, I'm not sure Judge Bellis will want to get involved in how we deal with it.

We are willing to send a wrap up letter, but that will not formalize our agreements. The Responses/Objections to the RFPs and Interrogatories need to be revised to incorporate the agreements. We have raised this issue several times. Do you disagree?

Jim

**James Vogts
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Chicago, IL 60611
(312) 222-8517**

Dolores Gilbertie

From: James Vogts <jvogts@smbtrials.com>
Sent: Tuesday, July 7, 2020 4:58 PM
To: Alinor C. Sterling; James Rotondo; Mueller, Jeff; Williams, Paul D.; Andrew Lothson
Cc: Schutte, Jacobus; Boehning, Christopher; Josh D. Koskoff; Lorena Gullotta; Jeffrey Wisner
Subject: RE: Soto

Alinor, I think another telephone conference would have been useful, but see Defendants' replies (in red) to your positions below.

1. An agreed on date by which Remington will provide the full list of designee deponents and topics, including the identities of the deponents.

On or before July 24, Defendants will identify the persons they have designated to testify on topics set forth in the deposition notice during the week of August 3 in North Carolina, and the topics they will address. **July 24 is very late, given that the depositions begin Aug. 2. Nonetheless, we will accept this if 1) the July 24 deadline is for the full list of designee topics and deponents, not only the topics and deponents to be covered by North Carolina witnesses, and 2) Remington produces topics and the identities of deponents on a rolling basis, as they are determined. To clarify, the depositions will begin Tuesday, August 4, not Sunday, August 2. Secondly, we anticipate providing you a witness name on the IT related topics in the deposition notice (Nos. 2, 3 and 4) well before July 24. Lastly, we are working toward presenting a witness or witnesses on the entirety of Topic 1 in North Carolina during the first week in August.**

2. A response from Remington concerning the procedure for the individually noticed depositions.

The upcoming individually noticed depositions in Maine and North Carolina should be conducted in accordance with Practice Book Section 13-30(g). Thus, they should be held at a court reporter's office. **We are agreeing to proceed remotely because we want to move the case forward. We do not mind having the deponent deposed at the court reporter's office and will maintain those arrangements. If, however, the witness is unable to attend at the reporter's office, we would intend to proceed with a fully remote deposition. If you object to this, please advise so that we know to raise it with the judge. Please remember that Defendants facilitated these depositions by contacting the witnesses and getting their agreement to appear for depositions, saving Plaintiffs the hassle of opening out-of-state proceedings and serving subpoenas. Defendants are not in any way standing in the way of conducting the depositions remotely or moving the case forward. However, the Practice Book provides rules for remote depositions, and Defendants are just asking that the Practice Book rules be followed. Notably, Section 13-30(g) only requires that the deponent be *in the presence* of the court reporter. In the unlikely event that one of the witnesses cannot get to the court reporter's office, the court reporter can go to the witness and all other provisions of Section 13-30(g) can be followed.**

3. A meet and confer date for the 3rd RFPs.

Defendants are available to meet and confer on Plaintiffs' Third Request for Production Tuesday afternoon, July 14. However, it makes sense to defer the meet and confer until after Plaintiffs have reviewed the additional responsive documents they will receive between now and Tuesday. I'm told they will number nearly 100,000 pages. We'll leave it up to you, but until Plaintiffs have seen and understand the substance and breadth of Defendants' document production, the tail seems to be wagging the dog. **Let's do 2 pm on July 14. Okay.**

4. Agreement from Remington that it will disclose the identities of the custodians whose files were searched for responsive documents.

Plaintiffs have Defendants' position on this subject. But to reiterate, the decision made by Remington's attorneys as to the persons who might have responsive documents reflects the attorneys' thought processes, and is attorney work product. Nevertheless, the parties had extensive negotiations regarding disclosure of custodial information in 2016 to finalize the ESI protocol. We have and will continue to disclose custodial information in accordance with the Protocol. **We do not have agreement on this point and will raise it with the Court on the 9th. Because we do not have agreement on this point, we will also claim RFP #17. So to be clear: are Plaintiffs now rescinding their agreement to limit the scope of RFP 17 to communications concerning the shooting and the shooter, and their agreement to limit the time period to January 2006 to December 2016? If that's the case, we ask that you attach all the meet and confer correspondence and emails between the parties addressing RFP 17 to your affidavit, specifically your July 2 letter, my July 3 email in response, your July 6 email in reply, and this email exchange today.**

5. An agreed-on approach to formalizing the agreements reached in these discussions, so that we end them with a clear record.

This will be complicated given the number of agreements that have been reached. Perhaps the best approach is for you to draft a document (not a letter) reflecting the agreements on the various RFPs we've discussed, setting forth Plaintiffs' clarifications and revisions of RFPs and Defendants' withdrawal of objections—basically the parties' agreements. Defendants will then review the document and propose edits, if needed. Regardless, of how we approach this subject, I'm not sure Judge Bellis will want to get involved in how we deal with it. **We are willing to send a wrap up letter, but that will not formalize our agreements. The Responses/Objections to the RFPs and Interrogatories need to be revised to incorporate the agreements. We have raised this issue several times. Do you disagree? Defendants do not disagree, but you've neglected to mention that the RFPs and Interrogatories themselves also need to be revised to reflect agreements. With regard to the RFPs we've at issue (which are the vast majority of discovery requests we've discussed) why won't a jointly prepared and jointly signed document (again—not a letter), with revised discovery requests and responses, "formalize our agreements?"**

Jim

**James Vogts
Swanson, Martin & Bell LLP
330 N. Wabash Suite 3300
Chicago, IL 60611
(312) 222-8517**

From: Alinor C. Sterling <ASterling@koskoff.com>

Sent: Tuesday, July 7, 2020 1:55 PM

To: James Vogts <jvogts@smbtrials.com>; James Rotondo <jhrotondo@daypitney.com>; Mueller, Jeff <jmueller@daypitney.com>; Williams, Paul D. <pdwilliams@daypitney.com>

Cc: Schutte, Jacobus <jschutte@paulweiss.com>; Boehning, Christopher <cboehning@paulweiss.com>; Josh D. Koskoff <JKoskoff@koskoff.com>; Lorena Gullotta <LGullotta@koskoff.com>; Jeffrey Wisner <JWisner@koskoff.com>

Subject: Soto

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Dolores Gilbertie

From: Jeffrey Wisner
Sent: Tuesday, July 7, 2020 3:27 PM
To: Alinor C. Sterling; James Vogts; James Rotondo; Mueller, Jeff; Williams, Paul D.
Cc: Schutte, Jacobus; Boehning, Christopher; Josh D. Koskoff; Lorena Gullotta; Alinor C. Sterling
Subject: Soto, DN 216, RFP #17
Attachments: Custodians_RFP17.pdf

Counsel,

Attached please find the list of custodians who should be included among the list of individuals that Remington has identified for a search in response to DN 216, RFP #17, as previously discussed. Once again, plaintiffs' provision of this list in no way limits Remington's obligation to conduct a reasonable search for responsive documents. Nor does this list waive plaintiffs' right to request additional searches in the future.

Jeff Wisner

Koskoff

Jeff Wisner, M.D. | Attorney at Law
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We do not have agreement on this point and will raise it with the Court on the 9th. Because we do not have agreement on this point, we will also claim RFP #17.

5. An agreed-on approach to formalizing the agreements reached in these discussions, so that we end them with a clear record.

This will be complicated given the number of agreements that have been reached. Perhaps the best approach is for you to draft a document (not a letter) reflecting the agreements on the various RFPs we've discussed, setting forth Plaintiffs' clarifications and revisions of RFPs and Defendants' withdrawal of objections—basically the parties' agreements. Defendants will then review the document and propose edits, if needed. Regardless, of how we approach this subject, I'm not sure Judge Bellis will want to get involved in how we deal with it.

We are willing to send a wrap up letter, but that will not formalize our agreements. The Responses/Objections to the RFPs and Interrogatories need to be revised to incorporate the agreements. We have raised this issue several times. Do you disagree?

Jim

**James Vogts
Swanson, Martin & Bell LLP
330 N. Wabash Suite 3300
Chicago, IL 60611
(312) 222-8517**

Name
Addison Rogers
Alfred Russo
Amy Dee
Andrew J. Logan
Anthony L. Moore
Bobby R. Brown
Chip Klass
Christian Hogg
Corry Doyle
Danny Throckmorton
David Garretson
Donald Campbell
Edward Rensi
Eric Epperson
Fredric Roth Jr.
Gary Keffer
General George A. Joulwan (Ret.)
General Michael P.C. Carns (Ret.)
General Michael W. Hagee (Ret.)
George J. Zahringer III
George Kollitides II
Grant Gregory Jr.
Igor Popov
James E. Geisler
James J. Pike
James Marcotuli
James P. Campbell
JaRonn Nelson/Clark
Jay Bunting Jr.
Jay Stuart
Jessica Kallam
John D. (Sean) Dwyer
John DeSantis
John M. Dwyer, Jr.
John Trull
Jonathan K. Sprole
Joseph Andrews
Josh Barca
Katie Hale
Keith Enlow
Kemp Newnam
Kent Graper
Kevin Graff
Kevin Miniard
Lisa Walters
Mat Hutchinson
Melissa Cofield
Mike Chamberlain
Mitch Cox
Nicole James
Paul Miller
Pete Arden
Robert Behn
Robert McCanna
Ronald Bristol II
Ronald E. Kolka
Ryan O’Malley

Name
Samuel Grecco
Scott Blackwell
Scott Parker
Scott Wille
Shari-Lynn Fix
Stephen P. Jackson, Jr
Ted Novin
Terry Wessling
Walter McLallen

EXHIBIT B

JAMES H. ROTONDO

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jhrotondo@daypitney.com

July 21, 2021

VIA E-MAIL ONLY

Alinor C. Sterling
Koskoff, Koskoff & Bieder PC
350 Fairfield Avenue
Bridgeport, CT 06604

Re: *Soto v. Bushmaster Firearms International, et al.*

Dear Alinor:

We are writing to set forth our position in more detail with respect to the former non-employee board members, who Plaintiffs assert are custodians who Remington should search for documents responsive to RFP 17 for the agreed on December 2012 through 2016 time-period. First, Remington does not have their data. They were not employees, did not have company e-mail addresses, and did not have company computers. Second, there is no basis to believe that these outside board members had information responsive to RFP 17 that would not be cumulative of the data found in the custodial collections Remington has already agreed to search: corporate secretary Jon Sprole (the General Counsel) and the four board members who were employed or had a company e-mail address, George Kollitides (a CEO and Chairman of the Board), James Marcotuli (a later CEO and Chairman of the Board), Ronald Kolka (a CFO and board member), and Walter McLallen (a Vice Chairman of the board). Third, Plaintiffs' identification of the former board members as potential custodians for the first time in June 2020, over four years after serving RFP 17, was unreasonable and untimely. In addition, Plaintiffs' request for review of what amounts to the personal e-mail accounts of these former non-employee board members is inconsistent with the position that personal e-mail accounts of the Plaintiffs need not be searched. *See* July 2, 2020 letter of J. Koskoff. Fourth, Scott Parker, Edward Rensi, and Paul Miller left the board before December 2012, and therefore are outside of the time period for which Plaintiffs are seeking information. If Plaintiffs decide to file an RFA on this subject, we ask that you include this letter with your filing.

As a general matter, a corporation cannot be required to produce documents possessed by its *former* board members because the corporation has no control over its former board members.

Alinor Sterling
July 21, 2021
Page 2

See, e.g., Greater N.Y. Taxi Ass'n v. City of New York, No. 13 Civ. 3089, 2017 WL 4012051, at *3 (S.D.N.Y. Sept. 11, 2017) (“[N]one of the [plaintiff’s] Custodians is currently a board member, so whatever mechanisms of control [plaintiff] had over them have since disappeared.”); *Kickapoo Tribe of Indians v. Nemaha Brown Watershed Joint Dist.* No. 7, 294 F.R.D. 610, 613-14 (D. Kan. 2013) (holding that, absent any legal right to obtain the requested documents, the defendant was not required to produce documents possessed by its former board members, staff, or employees). That is particularly true here, where Remington has now been through bankruptcy twice since this lawsuit was filed, is no longer a going concern, and has no employees, officers, or board of directors.

As you know, Remington, as the party responding to discovery requests, is entitled to select the custodians it deems “most likely to possess responsive information and to search the files of those individuals.” *Mortg. Resolution Serv., LLC v. JPMorgan Chase Bank N.A.*, No. 15 Civ. 0293, 2017 WL 2305398, at *2 (S.D.N.Y. May 18, 2017); *accord Firefighters’ Ret. Sys. v. Citco Grp. Ltd.*, No. CV 13-373-SDD-EWD, 2018 WL 276941, at *4 (M.D. La. Jan. 3, 2018); *Ford Motor Co. v. Edgewood Props., Inc.*, 257 F.R.D. 418, 427 (D.N.J. 2009) (“[a]bsen[t] agreement, a [responding] party has the presumption, under Sedona Principle 6, that it is in the best position to choose an appropriate method of searching and culling data.”).

Remington’s determination as to the reasonable and proper custodians should only be disturbed where the party seeking additional production presents compelling evidence that other custodians have relevant information that is not otherwise covered by current custodians or that current custodians have not produced relevant documents. *E.g., Mortg. Resolution Serv., LLC*, 2017 WL 2305398, at *2 (the court should not dictate the designation of ESI custodians unless the producing party’s choices are “manifestly unreasonable or the requesting party demonstrates that the resulting production is deficient”); *Firefighters’ Ret. Sys.*, 2018 WL 276941, at *4 (same); *Houston v. Papa John’s Int’l, Inc.*, No. 3:18-CV-00825-CHB, 2020 WL 6588505, at *2 (W.D. Ky. Oct. 30, 2020) (“Mere speculation that an individual’s high-ranking position within an organization might increase the relevance of that individual’s files is not a basis for designating that individual as a custodian.”). Indeed, even your co-counsel has publicly recognized this well-settled principle. *See* H. Christopher Boehning and Daniel J. Toal, *Issuing Guidance on ESI Custodians, Court Defers to Responding Party*, N.Y.L.J., April 3, 2018 (discussing “the growing body of case law supporting the notion that, absent compelling evidence to the contrary, responding parties are best positioned to make their own decisions regarding discovery”).

We have invited you on at least two occasions to explain why the Plaintiffs believe that these former non-employee board members have relevant information with respect to RFP 17 that is not otherwise covered by current custodians. To date, you have failed to provide any substantive response, let alone present “compelling evidence” supporting your position. Under the circumstances, we can only conclude that your position is based on speculation that the former board of directors may have responsive documents to RFP 17 solely by virtue of their

Alinor Sterling
July 21, 2021
Page 3

positions. This rank speculation is insufficient. *See Houston*, 2020 WL 6588505, at *2 (“Mere speculation that an individual’s high-ranking position within an organization might increase the relevance of that individual’s files is not a basis for designating that individual as a custodian.”); *Mortg. Resolution Serv., LLC*, 2017 WL 2305398, at *3 (same); *Assured Guar. Mun. Corp. v. UBS Real Estate Sec. Inc.*, Nos. 12 Civ. 1579, 12 Civ. 7322, 2013 WL 1195545, at *3 (S.D.N.Y. Mar. 25, 2013) (“[M]ere membership [by an executive] on a particular committee is not sufficient, by itself, to justify designation as a custodian whose files must be reviewed.”).

Remington’s designation as custodians of its corporate secretary Jon Sprole and the four board members who had company e-mail addresses, George Kollitides, James Marcotuli, Ronald Kolka, and Walter McLallen, more than satisfies its obligations with respect to custodians from the board of directors. *See Radio Music License Comm., Inc. v. Global Music Rights, LLC*, No. Cv. 19-3957 TJH (ASX), 2020 WL 7636280, at *4 (C.D. Cal. Jan. 2, 2020) (rejecting argument that twenty current and former board of directors should be included as custodians where the company’s Executive Director was typically copied on board communications, the Executive Director retained those records, and was a custodian).

Finally, as you were informed in writing on July 22, 2020, Remington was in the process of reviewing 25 former employees’ data for documents responsive to RFP 17 when the bankruptcy was filed on July 27, 2020. Since the bankruptcy stay was recently lifted nearly one year later, we have worked with what remains of bankrupt Remington (*i.e.*, a Plan Administrator) and arranged to double the number of former employees/custodians for RFP 17. The total number of custodians for RFP 17 is now approximately 50 former employees, which is a very high if not unprecedented number of custodians for any given case, let alone to respond to a single RFP that relates only to post-incident information. *See, e.g.*, H. Christopher Boehning and Daniel J. Toal, *Court Orders Cost-Shifting for ‘Needlessly Overbroad’ Discovery*, N.Y.L.J., October 12, 2020 (discussing *Lawson v. Spirit Aerosystems*, which concerns burdensomeness and cost shifting where the court had rejected the plaintiff’s request for 69 custodians). This level of cooperation underscores Remington’s commitment to compromise and move this process forward, even if it means taking on an extraordinary burden. In a similar vein, when active discovery first began during the summer of 2016 (and Remington responded to RFP 17) and the parties engaged in extensive negotiations to finalize the ESI Protocol (with both sides’ ESI consultants engaged in the process), which was entered as a court order on August 30, 2016 (Docs. 230.00 and 230.10), Plaintiffs never mentioned potential custodians or any desire to engage Remington with specific requests or inquiries about custodians. It is improper to raise this issue now, so many years after the painstaking negotiation of that protocol. In a case such as this, “parties must negotiate ESI protocols with care,” because once approved, they “are controlling as to the conduct of discovery for the matter.” H. Christopher Boehning and Daniel J. Toal, *ESI Protocol Outweighs FRCP Proportionality Protections, Court Says*, N.Y.L.J., February 2, 2021. That Plaintiffs waited until June of 2020 to first raise former board of directors as potential custodians for RFP 17 is both unreasonable and untimely by several years.

Alinor Sterling
July 21, 2021
Page 4

We do not believe there is any legitimate dispute left over RFP 17. We ask that you so agree, so that we can move this process forward by completing our review and production of responsive documents. If you would like to discuss the issues addressed in this letter or Jim Vogts' recent e-mails, we are available this afternoon between 2 pm and 4 pm. If that time window does not work for you, please give us some times that work for you.

Very truly yours,



James H. Rotondo

JHR/kpb

cc: Joshua Koskoff (via e-mail)
H. Christopher Boehning
Jacobus J. Schutte
Jeffrey W. Wisner
James Vogts
Andrew Lothson
Paul D. Williams
Jeffrey P. Mueller

EXHIBIT C

From: Alinor Sterling <asterling@koskoff.com>
Sent: Thursday, July 22, 2021 4:02 PM
To: Rotondo, Jim <jhrotondo@daypitney.com>
Cc: Joshua Koskoff <jkoskoff@koskoff.com>; Boehning, Christopher <cboehning@paulweiss.com>; Schutte, Jacobus <jschutte@paulweiss.com>; Jeffrey Wisner <jwisner@koskoff.com>; 'jvogts@smbtrials.com' <jvogts@smbtrials.com>; 'alothson@smbtrials.com' <alothson@smbtrials.com>; Williams, Paul D. <pdwilliams@daypitney.com>; Mueller, Jeff <jmueller@daypitney.com>; Brooks, Kathy <kpbrooks@daypitney.com>
Subject: Re: Soto v. Bushmaster

Dear Jim:

We agree that your letter and Jim Vogts' recent email warrant further conversation. We are free to discuss from 10:30-11:00 or 3:00-4:00 tomorrow. We will circulate an invite if that works for you.

We will not address all points made in your recent letter at this time, but reserve the right to do so. To be clear, this is no way a full statement of our many issues with your letter laying out your objections – and purporting to lay out the law – on the preservation and production of emails and documents for Remington's directors. There are, however, a few points that we wish to make before we speak tomorrow.

First, it has not escaped us that underlying your letter is a suggestion that Remington would need to affirmatively collect documents from its former directors, as opposed to being able to review documents and emails that should have been collected when this litigation first began in 2014. The very cases you cite acknowledge that the duty to preserve these documents begins when litigation becomes reasonably foreseeable. *Greater New York Taxi Ass'n v. City of New York*, 2017 WL 4012051, at *3 n.3 (S.D.N.Y. Sept. 11, 2017). While RFP 17 was not served back in 2014 when this case began, the marketing and advertising practices of Remington were at issue from the start. Remington was obligated to preserve documents for then-board members, just as it should have for its officers and employees. *Id.* at *3. This is not only reflected in the very caselaw that you cite, but also in the Connecticut Practice Book, which requires the production of documents possessed by

directors if the company is in “possession, custody or control” of the documents. See Conn. Practice Book Sec. 13-9. The emails and documents of directors, while they are serving as directors, are in your possession, custody or control - even where the emails are sent or received on personal accounts. We too can cite articles written by our colleague for the proposition that directors who conduct the company’s business through personal email addresses “may be subjecting themselves to invasive searches of their private files and e-mails if litigation erupts.” See Boehning & Toal, *More Than a Security Risk: Director E-mails in Discovery*, N.Y.L.J. (Apr. 3, 2012). The assertion that Remington is not required to collect potentially responsive documents is a troubling one as it suggests that this obligation to preserve was not met.

Second, at the end of your letter, you ask us to agree that there is no legitimate dispute left over RFP 17 “so that [you] can move this process forward by completing [your] review and production of responsive documents.” That is also troubling. The continued conversations around RFP 17 should in no way stop your production of responsive information, to the extent that this was a suggestion that you are not currently preparing documents for a production while we work through any remaining issues related to RFP 17.

Finally, we again acknowledge your agreement to meet your discovery obligations with respect to the agreed-upon custodians. We do not agree with your statement that this agreement is generous.

Alinor

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From: Brooks, Kathy <kpbrooks@daypitney.com>
Date: Wednesday, July 21, 2021 at 1:39 PM
To: Alinor C. Sterling <ASterling@koskoff.com>
Cc: Josh D. Koskoff <JKoskoff@koskoff.com>, 'cboehning@paulweiss.com' <cboehning@paulweiss.com>, 'jschutte@paulweiss.com' <jschutte@paulweiss.com>, Jeffrey Wisner <JWisner@koskoff.com>, 'jvogts@smbtrials.com' <jvogts@smbtrials.com>, 'alothson@smbtrials.com' <alothson@smbtrials.com>, Williams, Paul D. <pdwilliams@daypitney.com>, Mueller, Jeff <jmueller@daypitney.com>, Rotondo, Jim <jhrotondo@daypitney.com>
Subject: Soto v. Bushmaster

Good afternoon,

The attached correspondence is being sent to you at the request of James Rotondo. Thank you.

Kathleen P. (Kathy) Brooks | Legal Assistant






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